

Guidelines & Instructions for Clerks Who Assist Self-Represented Litigants in North Dakota's Courts

Prepared by the
Committee on Trial Court Operations

Approved by the
North Dakota Council of Presiding Judges
April 21, 2004

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Who Assist Self-Represented Litigants in North Dakota's Courts

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INTRODUCTION

Throughout the U.S. an increasing number of litigants are bringing their legal problems before the courts without the assistance of lawyers (i.e., self-represented or "*pro se*" litigants). Court users who are not attorneys often ask court clerks for information or advice that requires at least some legal expertise. Court staff know the maxim that they may not give legal advice, but in many situations it is difficult to tell what is "legal advice". Due to fear of stepping over the line and providing legal advice, some clerks might be overly cautious in providing assistance and information. In these situations, some court users might leave the courts unnecessarily frustrated and may lose confidence in the court system. This training and reference manual is intended to help clerks determine the appropriate way to respond to common questions from *pro se* litigants, thereby providing the best service possible. Clerks and staff should also review Judicial System Policy 125, included after this introduction, which broadly describes measures to assist self-represented parties.

This manual contains two general sections: 1) *Guidelines for Clerks Who Assist Self-represented Litigants*, and 2) *Suggested Responses to FAQs from Self-represented Litigants*. The *Guidelines* section provides both general policy principles and specific directions for staff in determining when and how to respond to requests for assistance or information. Subsection C.2 of the *Guidelines* may be of particular interest to clerk's office staff. It provides specific examples of "legal advice" that court staff should avoid. The comments following some of the guidelines clarify their meaning or discuss exceptions. Together, the *Guidelines* and comments should provide a substantial degree of clarity for court and clerks' office staff regarding the appropriate level of assistance to provide *self-represented* litigants.

Section 2 of the manual, *Suggested Responses to FAQs from Pro Se Litigants*, provides a long list of frequently asked questions from *self-represented* litigants and appropriate responses for clerks. Clerks' staff should become familiar with the *Guidelines* and *FAQs*. Clerks might even refer *self-represented* litigants to the reference manual, which could be placed at the counter where they are likely to appear to ask questions.

Naturally, this manual cannot anticipate all the possible questions that *self-represented* litigants might ask clerks. When new questions raise concerns about giving legal advice, clerks' staff should refer to the general principles set forth in the *Guidelines*. If they do not have time to look at the *Guidelines*, or if they refer to the *Guidelines* but still are not clear about how to respond to the question, they should consult with their supervisor. If a supervisor is not available, or if the question clearly calls for legal advice, the clerk should explain to the *self-represented* litigant that clerks are not allowed to provide legal advice. Remember, litigation can be a mine field for those who do not know what they are doing. Most litigants truly would benefit from consulting with legal counsel. So -- when in doubt -- suggest that the *self-represented* litigant consult an attorney, but **do not recommend specific attorneys**. You may refer parties to the **Lawyer Referral and Information Service (800-932-8880)**. Also see the list of phone numbers on the last page of this document.

There are other sources of information that might be helpful to *self-represented* litigants. The North Dakota State Bar Association provides several pamphlets in a variety of areas of the law. They include the following topics:

Farm Debtor/Creditor Issues
Divorce and Separation
Custody
Estate Planning
Revocable Living Trust
Bankruptcy/Bankruptcy Reorganization
Legal Fees
Lawyer Referral & Information Service
Alternative Dispute Resolution

Buying A Home
Child Support
Guardianship
Wills
Probate
Personal Injuries
Fee Arbitration
Complaint Against A Lawyer
Complaint Against A Judge

These can be found on the North Dakota State Bar Association web site (www.sband.org), or you can call the North Dakota State Bar Association at 1-800-472-2685.

Legal Services of North Dakota (1-800-634-5263) also provides help. (www.legalasst.org).

Another helpful site is the Woman's Law Initiative (www.womanslaw.org).

Finally, some of the responses to the *FAQs* include references to chapters of the North Dakota Century Code (N.D.C.C.) or Rules of Procedure. These may be offered to the litigant. Clerks should caution each *self-represented* litigant that besides the North Dakota Century Code sections cited in this manual, ***there may be other code sections - or case law (Supreme Court decisions) - that apply*** in a particular case. **Parties should not rely solely on the information provided by the clerk's office.** In most cases, litigants should consult an attorney.

The North Dakota Century Code can be viewed on-line at www.state.nd.us/lr/information/statutes/cent-code.html. Rules adopted by the North Dakota Supreme Court can be viewed and searched on the Court's website: www.ndcourts.com.

Guidelines for Clerks Who Assist Self-Represented Litigants

- A. The primary goal is to provide high quality service to court users.** We strive to provide accurate information and assistance in a prompt and courteous manner. However, in many or most situations involving *self-represented* litigants, the best customer service might be to advise the litigant to seek the assistance of an attorney.
- B. Absolute duty of impartiality.** Court staff must treat all litigants fairly and equally. Court staff must not provide assistance for the purpose of giving one party an advantage over another, nor give assistance to one party that they would not give to an opponent.
- C. Prohibition against giving legal advice.** Court staff shall not provide legal advice.
1. If a court user asks for legal advice, court staff should advise the person to seek the assistance of an attorney.
 2. Court staff should not apply the law to the facts of a given case, nor give directions regarding how a litigant *should* respond or behave in any aspect of the legal process. (This list provides examples of prohibited types of assistance. It is not comprehensive. In general, clerks must avoid advising litigants that they *should* include specific content in what they write or say, or that they *should* take a particular course of action.) For example, court or clerk staff **should not**:
 - a. Recommend whether to file a complaint or other pleading.
 - b. Recommend phrasing or specific content for pleadings. Clerks may inform litigants that some *general content* may be required in a pleading (e.g., identification of the other parties involved in the accident; a description of the facts surrounding the accident). But clerks *may not* tell a litigant whom to identify or which particular facts might be relevant in the pleading.
 - c. Fill in a form for the *self-represented* litigant. (**Exception:** If a litigant has a physical disability or is illiterate and therefore unable to fill in a form, the litigant explains the disability to a clerk's staff member and requests appropriate assistance, then the staff member may fill in the form. However, the clerk's staff member must write down the *exact words* provided by the litigant, and another staff member must witness the action.)
 - d. Recommend specific people against whom to file complaints or other pleadings.
 - e. Recommend specific types of claims or arguments to

- assert in pleadings or at trial.
 - f. Recommend what type or amount of damages to seek or the specific litigants from whom to seek damages.
 - g. Recommend specific questions to ask witnesses or other litigants.
 - h. Recommend specific techniques for presenting evidence in pleadings or at trial. Clerks should provide or identify the place where someone can obtain pamphlets or other documents that address this issue and that have been prepared for general distribution to the public.
 - i. Recommend which objections to raise to an opponent's pleadings or motions at trial or when and specifically how to raise them.
 - j. Recommend when or whether a litigant should request (or oppose) a continuance.
 - k. Recommend when or whether a litigant should settle a dispute.
 - l. Recommend whether a litigant should appeal a judge's decision.
 - m. Interpret the meaning or implications of statutes or court decisions as they might apply to an individual case.
 - n. Perform legal research. Clerks may refer litigants to sections of the North Dakota court rules or N.D.C.C. for rules or statutes that govern matters of routine administration, practice, or procedure; and they may give definitions of common, well-defined legal terms used in those Code sections. However, clerks may not *interpret* the meaning of statutes or rules.
 - o. Predict the outcome of a particular case, strategy, or action.
3. If you are uncertain whether the advice or information constitutes "legal advice" -- seek the assistance of a supervisor. If a supervisor is not available, inform the litigant that you are not able to provide the information and that the litigant should seek help from an attorney.

D. Authorized information and assistance. When a *self-represented* court user seeks help -- excluding legal advice -- we should respond to questions to the best of our ability. We are **authorized** to:

- 1. Provide public information contained in:
 - a. dockets or calendars,
 - b. specific case files,
 - c. indexes, and
 - d. other reports.
- 2. Recite common, routinely employed:
 - a. court rules,
 - b. court procedures, and

c. administrative practices.

Reciting a common rule is permissible, but court staff should not attempt to apply the rule to the facts in the litigant's case.

Sometimes, after a clerk recites a rule (e.g., "After a judge enters a judgment in your case, you have 30 days to file an appeal."), a *self-represented* litigant will ask whether or how the rule would apply, or if the rule might be applied differently, given the facts in his or her case. This calls for an *interpretation* of the law or rule of procedure.

3. Show or tell the *self-represented* litigant where to find pertinent statutes or rules of procedure.
4. Identify forms that might meet the needs of the *self-represented* litigant, and provide forms that are available for the guidance of *self-represented* court users. When a clerk is reasonably certain about which form is most appropriate for use by a given litigant, the clerk should identify the appropriate form. However, clerks should avoid telling litigants that they *should* or *must* use a particular form. The appropriate approach in most situations is to tell the litigant: a) a particular form probably will meet the individual's needs; b) that you cannot guarantee that this is the correct form; and c) the litigant should read the form very closely or consult an attorney to determine the appropriateness of the form for the litigant's purposes.
5. Answer questions about how to complete forms (e.g., where to write in particular types of information), but **not** questions about how the litigant *should* phrase his or her responses on the forms.
6. Define terms commonly used in court processes.
7. Provide phone numbers for lawyer referral services. (See appendix of this manual.)

E. Prohibition against revealing the outcome of a case before the information is officially released to the litigants or public. Court or clerk's staff shall not disclose the outcome of a matter submitted to a judge for decision until the outcome is part of the public record, or until the judge directs disclosure of the matter.

F. Ex parte communications.

1. If a litigant or attorney submits an *ex parte* **written** communication for a judge (e.g., to grant a continuance; to stop or limit a garnishment), court staff **must** deliver it to a judge who should decide what action, if any, is appropriate.
2. If a party makes a **verbal** request that a judge take some type of **action** in a case, the clerk should tell the litigant to **put the request in writing** and:
 - a. Address the request to the court;
 - b. include the case number (if any) on the document;
 - c. write the date on the document;
 - d. sign the written document;
 - e. print the person's name under the signature;
 - f. write the person's address and telephone number on the

document;

g. deliver the written request to the clerk's office; and

h. serve a copy of the document on the other side (in a manner consistent with the North Dakota Rules).

Proof of service should also be filed in written form pursuant to the rules.

3. If a party or attorney contacts a district court clerk by telephone with a verbal request for judicial **action** and there is **insufficient time to deliver a written request** to the clerk's office (i.e., an **emergency situation**), the clerk **shall** communicate the request to the judge in accordance with procedures established by the judge for handling such communications. The clerk, however, should tell the caller that the clerk cannot guarantee that the judge will grant the request.

Suggested Responses to FAQs from Self-Represented Litigants

I. General Questions

A. ASSISTANCE FROM CLERKS

**I have asked you several questions and you won't answer them.
Why aren't you more helpful?**

The clerk should **politely** advise that, first, many questions require the clerk to explain or interpret the law or how the law would apply in the litigant's case. This constitutes legal advice, and **the law prohibits clerks from providing legal advice to litigants**. Further, if a litigant misunderstands a statement by a clerk, or a clerk gives an incorrect answer to a question -- and the litigant loses his or her case as a consequence -- the litigant might blame the clerk. For these reasons, clerks must refrain from answering many questions that people ask and can only refer people to legal counsel.

B. ATTORNEYS (RECOMMENDING ONE)

What attorney should I call to handle my case? Who would be good?

Clerks are not allowed to recommend specific attorneys or law firms. Parties should contact the North Dakota State Bar Association's attorney referral service. **Call toll free: 1-800-472-2685.** [This is a free service.] Parties could also check the yellow pages in the phone book or ask their friends for a recommendation.

C. COMMUNICATION WITH JUDGES.

Can I talk to a judge?

Clerks must be cautious about allowing people to talk to a judge because judges must avoid ***ex parte*** contacts with litigants. [For guidance on this issue, *see Guideline F.*] The clerk should ask for the person's **name** and **why** she or he needs to talk to the judge.

If the issue is **unrelated to any case before the court**, the clerk should refer the questions to the judge, if available.

If the issue involves an **emergency scheduling matter** (e.g., request for a continuance due to car problems on the morning of a hearing), the clerk should write down the request and contact the judge. Tell the person that the judge will decide whether the scheduling request will be granted. (If the issue is just a scheduling matter, some judges might talk to the person.)

If the issue involves a **non-emergency request for a continuance**, most judges require the request to be submitted in writing. (This might vary by county or district.) But

the clerk should refer the question to the judge, if available.

If the person wants to talk to a judge about **issues under litigation**, the judge **cannot** allow such communication unless all parties involved in the case are present (i.e., at a hearing). If the person wants to give the judge information pertinent to a case or wants the judge to take some action related to a case, the person must: 1) put the request *in writing*; 2) file it in the clerk's office; and 3) provide copies to the other parties in the case (See North Dakota Rules of Civil Procedure).

D. JUDICIAL DECISIONS

What will the judge say?

Clerks may not speculate on what a judge might say or do.

E. LEGAL RESEARCH

Where can I find information on North Dakota laws and rules?

[→ REMEMBER: **Court clerks cannot do legal research for litigants.**]

North Dakota's statutes (laws passed by the state legislature) are in the North Dakota Century Code (also known as the Code or N.D.C.C.). The North Dakota Court Rules contain the procedures that litigants must follow in North Dakota's courts. Your city or county library should have copies of these volumes. The North Dakota Century Code can be found at www.state.nd.us/lr/information/statutes/cent-code.html. North Dakota Court Rules can be searched on the Internet at the North Dakota Supreme Court web site: www.ndcourts.com.

Most of North Dakota's seven judicial districts also have Local Rules that govern certain aspects of the court process. (For information on the Local Rules, you can check the North Dakota Supreme Court web site.) Further, in some circumstances a litigant might have to examine decisions by the North Dakota Supreme Court to see how the courts have interpreted the laws and rules. A person might have to go to a law school library to find up-to-date research materials. Ask a librarian for assistance with these materials. (Recent decisions by the North Dakota Supreme Court and Court of Appeals are available on the North Dakota Supreme Court web site.)

F. SCHEDULING & COURT APPEARANCES

1. Do I have to be in court today?

The clerk may review whatever notice the party has to determine whether the party must appear in court and where the hearing (if any) will be held.

2. Can I reschedule (continue) my hearing to a later date?

Only the Court can continue a hearing. If the party files a written request with the clerk and provides a copy of the request to the other parties (or the states attorney in a criminal case), the Court will consider the request.

3. My car won't start, so I can't get to the hearing today. Can you tell the judge?

The answer to this question depends on local custom. Some clerk's offices will convey a message regarding case scheduling to a judge, but some direct the party to the other side (or state's attorney's office in a criminal case).

G. RECORDS SEALED BY COURT ORDER

Can I see my sealed file?

Clerks are not authorized to provide sealed records to the public. The person should submit a written and signed request to the judge who has authority to make a determination regarding: whether a sealed record exists on the matter at issue; and whether the requesting party has a right to view information in the sealed file. The written request should include the following:

- 1) sufficient information so the judge can determine whether such a record exists;
- 2) the reason(s) supporting the requestor's right to view the sealed record; and
- 3) the requestor's name, address, and phone number.

H. CONFIDENTIAL OR RESTRICTED RECORDS

Can I see my confidential file?

If the person requesting to see a confidential file is a party to the action, then the person or the person's attorney can view the file. Clerks should review Supreme Court Administrative Rule 41 for a description of confidential records and methods of access.

I. SUBPOENAS

I have a witness that could help my case, but the person doesn't want to testify in my case. What can I do?

The clerk is authorized by court rule to issue a subpoena for a party in a case. See Rule 45, Rules of Civil Procedure; and Rule 17, Rules of Criminal Procedure. The person requesting the subpoena should be told to review the applicable rule and informed that the subpoena must be served as directed by the rule. The person must pay the applicable fee for issuance of the subpoena and must pay to the subpoenaed person fees for attending the proceeding, including mileage and travel expenses. If the party cannot pay these fees in a criminal case, the party should notify the court.

Important: The clerk cannot tell the party **who** to subpoena.

II. Civil (Non-Domestic) Cases

A. FILING A COMPLAINT

1. How long do I have to file my complaint?

The North Dakota Century Code index lists statutes of limitations, but other Code chapters could apply depending on the type of case and facts involved. The party should consult an attorney.

2. How do I serve my complaint on the opposing party?

The clerk may point out the various means of service that are set out in North Dakota Rules of Civil Procedure (Rule 4). The inquirer should consult an attorney to determine the proper means of service for the party's particular case.

3. The filing fee seems high. Why is it so steep?

Filing fees are set by state law, not by the court or clerk's office.

4. In what county [or state] do I file my case? (How do I know where venue lies?)

The answer to this question depends on the type of case that is being filed, where litigants live, and where events took place. Sorting out the impact of these factors would constitute legal advice. The clerk should advise the party to consult an attorney.

B. ANSWERING A COMPLAINT

1. How do I file an answer?

An answer should be in writing (preferably typed [see Rule 3.1, Rules of Court, for how pleadings should be prepared]) and filed with the clerk within 20 days after the complaint was served on the party. (For information on calculating deadlines, see North Dakota Rules of Civil Procedure, Rule 4 and others.) The litigant must provide a copy to the opposing party. The clerk may point out the various means of service under Rule 4. The answer includes a response to each specific allegation or paragraph in the petition or pleading to which the defendant is responding. (See North Dakota Rules of Civil Procedure, Rule 12.) Since the answer should also incorporate any affirmative defenses, the clerk should suggest that the party consult with an attorney.

2. A complaint was filed on me 20 days ago. Now here I am to make my appearance.

A **written answer** must be filed in the clerk's office within 20 days after the complaint was served on the party (See response in B.1 above.) A defendant may file an answer after the 20 day time period, but the clerk cannot guarantee what effect the answer will have in the case.

3. A petition was filed on me more than 20 days ago. Can I still file an answer?

The clerk can accept an answer at any time, even if it is late. But the clerk cannot speculate about the legal consequences of filing the answer late. If the plaintiff has already filed an application for default judgment or has obtained a default judgment, the defendant should definitely consult an attorney for options.

C. BANKRUPTCY

If I file bankruptcy will my debts go away?

The clerk should not speculate about how bankruptcy laws would apply in a particular case, which would be a clear example of providing legal advice. In addition, bankruptcy is a complicated area of the law. Strongly recommend that the party consult an attorney.

D. COLLECTION / ENFORCEMENT OF JUDGMENTS (Liens, etc.)

1. How do I file a mechanic's lien?

Mechanic's liens are handled by the county recorder.

2. Are there any liens on my property?

Clerks do not provide this service. People are free to search the records themselves in the Recorder's Office or have a title company or an attorney conduct a search for them. As to real estate liens, they should also be told to check with the Recorder's office.

3. Are there any judgments against me or my property?

The clerk may refer the person to a public terminal if one is available, allow the person to search records as provided under Administrative Rule 41, or the clerk may conduct a record search for the person (see Administrative Rule 47 for record search requirements and applicable fee).

E. NAME CHANGE

How do I change my name? [Not part of divorce case.]

Follow the instructions in North Dakota Century Code Chapter 32-28 and pay the filing fee.

F. REAL ESTATE ISSUES

1. Can you provide me with a *legal description* of my property?

This information is not available in the clerk's office. The person should go to the County Auditor or Assessor, or the Recorder.

2. Is an address good enough? [RE: Legal description of real property]

An address is insufficient when a legal description of property is *required*.

3. How do I get someone's name off my property?

This could be accomplished by a petition to **quiet title**. Like most lawsuits it could become legally complicated. Advise the party to seek the assistance of an attorney.

III. DOMESTIC ABUSE

A. PROCESS

How do I get a restraining or protection order against someone?

First determine the type of order sought by the person.

Disorderly Conduct Restraining Order: Give them a copy of the appropriate forms.-

Domestic Violence Protection Order: For protection orders the clerk should suggest the party consult with an attorney. The party might also seek assistance from a local domestic abuse assistance center. The clerk's office can obtain updated lists of the nearest centers, or parties can be directed to contact the North Dakota Council on Abused Women's Services at 1-701-255-6240, 1-888-255-6240; 418 East Rosser #320, Bismarck ND 58501, www.ndcaws@ndcaws.org, for the nearest **domestic violence** assistance program.

B. APPOINTMENT OF ATTORNEY

1. Will the State's Attorney represent me?

The State's Attorney represents the state in **criminal** cases. For more information, the litigant should consult with the State's Attorney.

2. Can you appoint an attorney for me?

Only a judge can appoint an attorney, and a judge may appoint an attorney only in certain cases. In most civil and domestic cases there is no provision for the appointment of counsel, but the clerk may refer the party to Legal Services of North Dakota, or the State Bar Association, who often assist civil litigants who cannot afford to hire an attorney.

IV. Domestic: Divorce, Modifications, and Support

A. FILING & MODIFICATION ISSUES

1. How do I file a divorce without an attorney?

The statutes pertaining to dissolution of marriage are found in Chapter 14-05 of the North Dakota Century Code. Anyone who plans to file for divorce without assistance from an attorney should review that chapter. The person should also review Rule 8.4 of the Rules of Court. The person must file a written “complaint” at the clerk’s office and pay the filing fee. A copy of the complaint together with an original notice must be served on the opposing party. The opposing party then has **20 days** to file an answer. If the issue is contested, the case will eventually be set for trial before a judge. Also advise the party about any **special procedures** that he or she should expect as part of the divorce process in your district (e.g., mediation). However, a divorce is always complicated, and the clerk should encourage the party to seek advice and assistance from legal counsel.

2. Can I have forms to file a divorce?

There are places where people may obtain a “do-it-yourself divorce kit,” but clerks’ offices in North Dakota do not provide these kits to litigants. Clerks should not suggest specific pleadings or specific ways to phrase a pleading. Forms for “simple divorce” cases are available on the Supreme Court’s website. If a person does not have access to a computer, the clerk can provide a set of the forms for a nominal fee (\$5.00).

3. How do I modify my divorce decree?

The person must file a “motion to modify” at the clerk’s office. For motions requesting modification of alimony, property division, child support, child custody, or a stipulation to such modifications the applicable filing fee must be paid. A copy of the motion together with an original notice must be served on the opposing party. The opposing party then has a certain length of time to file a response. If the issue is contested, the case will eventually be set for a hearing before a judge. Modifications are often complicated. Encourage the party to seek advice and assistance from legal counsel and that legal services might be available for those who cannot afford an attorney. Rule 3.2 of the Rules of Court sets out other procedures for motions.

4. How do I file for legal separation?

Legal separation is filed in the same manner as a divorce. (See North Dakota Century Code Chapter 14-05.) Advise the party to seek assistance from legal counsel and that legal services might be available for those who cannot afford to hire an

attorney.

5. How do I file for an annulment?

An annulment is filed in the same manner as a complaint for dissolution of marriage. (See North Dakota Century Code Chapter 14-04.) Advise the party to seek advice and assistance from legal counsel and that legal services are available for those that cannot afford to hire an attorney.

B. ANSWER

When are my 20 days up (for filing an answer)?

Generally the 20-day period to file an answer commences from the date of service (the date the defendant receives a copy of the complaint), but this could vary according to circumstances of the case. The party should seek advice from legal counsel as to the party's particular situation.

C. CHILD SUPPORT

1. How do I get my ex-spouse to pay child support?

The answer to this question depends on whether the ex-spouse was previously ordered to pay child support. Also, the inquiry requires the clerk to give legal advice, which the clerk may not provide. The party should seek assistance from legal counsel or contact the Child Support Enforcement Unit.

2. My ex-spouse won't let me see the kids. Do I still have to pay child support?

Yes, the person must continue to make support payments. Denial of visitation is a separate issue from child support. Advise the party to follow the directions of the divorce decree and seek advice and assistance from legal counsel regarding the visitation issue. Forms regarding enforcement or modification of child visitation orders are available on the Supreme Court's website. If a person does not have access to a computer, the clerk can provide a set of the forms for a nominal fee (\$5.00).

3. How do I get the court records to show I've satisfied my child support obligation?

The Child Support Enforcement Unit can give a person a record of what he or she has paid. Advise the party to seek advice and assistance from legal counsel if there is difficulty in acquiring a satisfaction to a fully paid judgment.

4. How far behind am I on my child support?

The clerk may provide the party with a copy of the child support payment record. You may also refer the party to the Child Support Enforcement Unit for further clarification and suggest the person sign a non-AFDC contract.

5. How do I get my child support payments reduced?

If the support was set in a divorce, a motion to modify the divorce is necessary. Pleadings must be filed and the issues could be legally complicated. Offering further advice on this question requires the clerk to provide legal advice, which the clerk may not do. Encourage the person to seek advice and assistance from legal counsel. The person can also be referred to the Regional Child Support Enforcement Office for possible assistance in reviewing the child support.

6. Can I pay my child support directly to my ex-spouse?

No. Child support payments **must** be made to the **State Disbursement Unit, PO Box 7280, Bismarck ND 58507**. For further information, instruct the party to follow the directions of the divorce decree or to seek advice from legal counsel.

7. My child has graduated from high school. Do I still have to pay child support?

The law provides that child support usually continues until age 18, but if the child is still in high school, it is continued until age 19 or graduation, whichever comes first. Advise the party to **read the divorce decree and the instructions on the Affidavit of Custodial Parent form**, or seek advice from legal counsel for any special circumstance concerning his/her case.

D. CUSTODY AND VISITATION

Where do I go for custody battles?

Assuming that the party wants to litigate a custody issue, the clerk should advise that all pleadings must be filed in the clerk's office. Encourage the party to consult an attorney.

E. DISMISSALS

I filed a complaint for a divorce, but I changed my mind. How do I dismiss my divorce case?

The answer to the question depends on whether the spouse has filed an answer or other responsive pleading. If no answer or other responsive pleading has been filed, the petitioner may simply file a dismissal. If an answer or other responsive pleading has been filed, the spouse must join in the motion to dismiss the case. Advise the party to seek assistance from an attorney.

F. DIVORCE DECREE IN ANOTHER STATE

I got a divorce decree in another state. How do I transfer it to North Dakota?

This question typically arises when a person wants to enforce a child or spousal

support obligation in North Dakota that was ordered in another state. This can be complicated. The party should seek assistance from a private attorney or see the Child Support Enforcement Unit.

G. DIVORCE DECREE: WHEN IS IT FINAL?

1. Am I divorced?

Refer the party to the court file and divorce decree if available. If the party still has questions, advise the person to seek advice from legal counsel.

2. Can I get remarried tomorrow?

Refer the person to the wording of the judgment. Often there is a restriction against remarrying (except to each other), for a specified time period.

H. NAME CHANGE (as part of a dissolution of marriage)

I want to take my maiden name back. How do I do that?

This is accomplished most often through a divorce decree or annulment. (See North Dakota Century Code Chapter 14-04 or 14-05). The clerk may advise the person to discuss this with the person's attorney. If the person is unrepresented, advise the party that she or he must file a written motion for change of name at the clerk's office and deliver a copy of the motion to the opposing party. The request will then be considered by the judge.

Note: For information on name changes other than those arising from a dissolution of marriage, there is a simple process for first names, and a slightly more complicated method for surnames. The person should consult an attorney or the North Dakota Century Code (Chapter 38-28).

I. PATERNITY

1. How do I establish / disestablish paternity?

North Dakota Century Code Chapters 14-17 and 14-19 discuss these issues. Reviewing those statutes might be beneficial. Establishing or disestablishing paternity is a very important matter and can be very complicated. Encourage the party to seek assistance from legal counsel. The clerk might also suggest that the party contact the Child Support Enforcement Unit for further information.

2. How do I get a blood test?

In a case to establish paternity a party may request the judge to order blood testing. The request should be **in writing in the form of a motion**, filed with the clerk, with copies provided to opposing parties. The judge will then consider the request. The party should be advised that there are costs involved and they should probably consult with an attorney. They might also check with the Child Support Enforcement Unit to see

if they might help.

J. RESTRAINING ORDERS

I want a restraining order. Will you do this for me?

If this is a request for a Disorderly Conduct Restraining Order under North Dakota Century Code Ch. 12.1-31.2, the clerk should offer forms and some assistance with filing and presenting the petition to a judge. For other types of restraining orders advise the party to seek assistance from legal counsel and that legal services might be available for those who cannot afford an attorney. The person may also be advised to seek the assistance of the local domestic violence shelter. (See also Section III - Domestic Abuse.)

V. Criminal and Traffic Cases

A. APPEALS

How do I file a notice of appeal?

The notice has specific deadlines (30 days) Because it is very important to follow procedures in appeals, you should direct them to seek the advice of an attorney.

B. ATTORNEYS

1. How do I get an attorney?

Defendants have the right to hire their own attorney. If financially unable to do so, a defendant may apply for a court-appointed attorney, and the clerk, as applicable, should provide the application form. At the time the application is submitted, the defendant must pay a \$25 application fee, which is required by state law. Sometimes the defendant may not be able to pay the fee. If so, notify the judge. The application must be accepted even if the defendant cannot pay the fee. The request for appointed counsel will be considered to determine whether the person is eligible for court-appointed counsel.

2. Why do I have to reimburse the state for court-appointed attorney fees?

State law requires those who receive these services to pay to the extent they are able.

3. Why can't I have a court-appointed attorney?

There are financial criteria for determining when a person qualifies for a court-appointed attorney in criminal cases. The decision on whether a defendant qualifies for a court-appointed attorney is based on the defendant's financial resources. The defendant must also be facing the possibility of jail (so first infractions and non-criminal traffic charges do not apply).

C. BOND

1. How do I get a friend out of jail (out on bond)?

If bond has been set, advise the party how that bond may be posted.

2. When will I get my bond money back?

The bond is returned to the defendant or, in some cases, a designated third party (Refer to N.D.C.C. Section 29-08-28). The bond is subject to a set-off toward any amount owed.

D. CHARGES & CHARGING ISSUES

1. What have I been charged with?

The clerk may show the defendant the defendant's own file unless it has been sealed by court_order. If the file has been sealed, contact the judge. If the defendant has further questions, the clerk should suggest that the party consult with an attorney or with the prosecutor's office.

2. It wasn't my car, so why did I get a ticket for no insurance?

Clerks are not authorized to speak for law enforcement officers or to speculate as to why an officer did or did not issue a ticket. Encourage the person to seek advice from legal counsel or ask the prosecuting attorney.

E. COMPLAINTS (REGARDING POLICE OFFICERS)

How do I file a complaint about a law enforcement officer?

The clerk may refer the party to that branch of law enforcement's department supervisor.

F. COURT COSTS

1. Why are my fines so high?

Fines and fees are established by state law. The judge assesses them; the clerk's duty is merely to collect those costs.

2. What are the minimum fees?

The clerk can tell a defendant what the maximum penalty is for most cases. But minimums can vary depending on the charge. Advise the defendant to seek the advice of an attorney or ask the judge *in court*.

12.1-32-01. Classification of offenses - Penalties

Offenses are divided into seven classes, which are denominated and subject to maximum penalties, as follows:

1. **Class AA felony**, for which a maximum penalty of life imprisonment without parole may be imposed. The court must designate whether the life imprisonment sentence imposed is with or without an opportunity for parole. Notwithstanding the provisions of section 12-59-05, a person found guilty of a class AA felony and who receives a sentence of life imprisonment with parole, shall not be eligible to have that person's sentence considered by the parole board for thirty years, less sentence reduction earned for good conduct, after that

person's admission to the penitentiary.

2. **Class A felony**, for which a maximum penalty of twenty years' imprisonment, a fine of ten thousand dollars, or both, may be imposed.

3. **Class B felony**, for which a maximum penalty of ten years' imprisonment, a fine of ten thousand dollars, or both may be imposed.

4. **Class C felony**, for which a maximum penalty of five years' imprisonment, a fine of five thousand dollars, or both, may be imposed.

5. **Class A misdemeanor**, for which a maximum penalty of one year's imprisonment, a fine of two thousand dollars, or both, may be imposed.

6. **Class B misdemeanor**, for which a maximum penalty of thirty days' imprisonment, a fine of one thousand dollars, or both, may be imposed.

7. **Infraction**, for which a maximum fine of five hundred dollars may be imposed. Any person convicted of an infraction who has, within one year prior to commission of the infraction of which the person was convicted, been previously convicted of an offense classified as an infraction may be sentenced as though convicted of a class B misdemeanor. If the prosecution contends that the infraction is punishable as a class B misdemeanor, the complaint shall specify that the offense is a misdemeanor.

This section shall not be construed to forbid sentencing under section 12.1-32-09, relating to extended sentences.

MANDATORY COURT FEES (N.D.C.C. 29-26-22)

	Administration Fee	Facility Fee	Total Fees
B Misdemeanor	\$125.00	\$100.00	\$225.00
A Misdemeanor	\$200.00	\$100.00	\$300.00
C Felony	\$400.00	\$100.00	\$500.00
B Felony	\$600.00	\$100.00	\$700.00
A and AA Felony	\$900.00	\$100.00	\$1,000.00

If a defendant appears on a bad check charge, additional costs in the amount of **\$10 or 25%** of the amount of restitution, **whichever is greater**, must also be imposed. The maximum costs imposed cannot exceed \$1,000. [N.D.C.C. 12.1-32-08(2)].

G. DEPARTMENT OF TRANSPORTATION

1. What is the DOT telephone number:

General Information: 701-328-2500
Drivers License & Traffic Safety: 701-328-2600
Suspensions: 701-328-2604
Email - www.state.nd.us/dot

2. Will you call the DOT and tell them that I paid my ticket?

Clerks do not make individual calls for this purpose. If the ticket has been paid, the clerk should provide the party with written receipt that can be presented to the DOT as proof of payment. Tell the person the phone number to call or DOT location where he or she can go to take care of this matter. Clerks will notify DOT of payment in the same

manner as payments of other administrative traffic tickets.

H. FINES

1. How do I get my fines taken directly out of my check?

The clerk may refer the party to a voluntary wage withholding form if available and assist the party with completing the form.

2. I want to pay a fine, but I don't know what it is for.

The clerk may assist the party in reviewing her or his case record to determine if a fine has been imposed, the reason for the fine, and the amount.

3. When do I have to pay my fine?

Fines are usually due at sentencing unless additional time to pay is granted by the court, or a fine payment schedule is set up.

4. Why won't you take my check?

Checks are not acceptable for cash bonds. However, most clerk's offices will accept checks as payment for fines and costs unless the party has had check problems in the past.

5. I paid this ticket a while ago. Why don't you show it paid?

If the party can produce some proof of payment, the clerk will investigate why credit does not appear on the docket.

6. Will you give me an extension to pay my fine?

Only a judge may grant an extension. The defendant should file a request in writing with the clerk who will then give the request to the judge for consideration. There may be local rules so contact your supervisor.

7. What do the police do with all the money I pay?

Fine payments do not go to officers or law enforcement agencies directly, but are paid to the general fund of the State of North Dakota. Other fees are mandated to other state funds.

I. GUILTY PLEA

How do I plead guilty?

Suggest the party consult legal counsel or speak to the prosecutor.

J. LICENSE SUSPENSION

1. Why is my license suspended when I paid my ticket?

It is likely that either the DOT has not recorded the payment and lifted the suspension, or the party's license is suspended for other reasons. Advise the party to contact the DOT and be prepared to provide proof of payment of the ticket.

2. What will happen if I don't pay my fine by the due date?

The party's license may be suspended.

K. RECORDS & WARRANTS

1. Can you do a record check for me?

The clerk may refer the person to a public terminal if available, allow the person to search records as provided under Administrative Rule 41, or the clerk may conduct a record search for the person (see Administrative Rule 47 for record search requirements and applicable fee).

2. This isn't supposed to be on my record. Why is it showing up?

The clerk should first determine if the matter was recorded properly and, if so, advise the party to seek advice and assistance from legal counsel.

3. Is there a warrant out for my arrest?

The party should check with local law enforcement.

L. RESTRAINING ORDERS

How do I lift a no contact order?

1. Criminal: Contact the state's attorney's office.
2. Civil: This would depend on the type of restraining order. You should direct them to seek the advice of the attorney or shelter that helped in obtaining the order. If self-represented, tell them to put the request in writing, serve a copy on the other side, and you will give it to the judge.

M. SENTENCES: OUTCOMES AND OPTIONS

1. What will be my sentence?

The judge imposes the sentences, and it would be inappropriate for the clerk to speculate.

2. Am I going to jail?

Sentencing depends on a variety of factors, and it would be inappropriate for the clerk to speculate on what the judge might do.

3. Where can I go for traffic class?

The party should check with the prosecutor's office.

4. How do I get unsupervised probation?

Because this is such an important issue, the clerk should emphasize that the best option would be to consult with legal counsel. However, if the defendant is not going to contact an attorney, the clerk may suggest that the defendant could contact the state's attorney to discuss the issue, or the defendant could make the request to the judge at sentencing. But the clerk may not tell the defendant which option the party *should* choose.

VI. Probate

WILLS, CONSERVATORSHIP, GUARDIANSHIPS

1. Can I file my own guardianship and conservatorship?

It is possible to file your own guardianship and conservatorship, but due to legal complexities and potential liability, the party should be advised to first consult an attorney.

2. As a guardian (or conservator), do I have to file an annual report?

It is assumed that this question pertains to reporting requirements for guardians and conservators. Guardians and conservators usually file annual reports unless the court otherwise orders. They should look to the order appointing the guardian or conservator, or seek advice of counsel.

3. Do you have my will?

Refer the person to the Recorder's office.

4. How do I file a claim in probate?

The North Dakota Century Code regulates the filing of probate cases. The clerk should offer any forms that might be available for that purpose. Clerks' offices also offer basic information on the steps required in filing a claim. (The clerk should have available the instruction booklet for informal probate and related pre-printed probate forms for a fee of \$5.00. The instruction booklet and probate forms are also available on the Supreme Court's website.) However, there are many questions which require legal analysis, such as statute of limitations, separate actions in lieu of claims in probate, secured and unsecured claims, contingent claims, classification of debts and charges, order of payment, and procedure when disallowed. The clerk should advise the party to seek advice and assistance from an attorney.

5. Do I have to open a probate for a dead relative?

This question requires a legal opinion, which the clerk may not offer. A probate is not required for every deceased person, but it may be necessary to transfer property, pay claims, and obtain tax clearances. The clerk should advise the party to seek assistance from legal counsel.

VII. Small Claims

A. FILING A SMALL CLAIM CASE

1. How do I file a small claim?

The clerk will provide any pamphlets that are available as well as forms for filing small claims. You may also point out where information should be placed on the forms. You should not offer recommendations as to the phraseology of the information that goes on the form, whom the party should sue, or whether a small claim should be filed. Forms and instructions for filing small claims actions are also available on the Supreme Court's website. If a person does not have access to a computer, the clerk can provide a set of pre-printed forms for a nominal fee (\$5.00).

2. Whom do I file against?

This question requires the clerk to offer legal advice, which a clerk may not provide.

3. Do I have a case against this person?

This question requires a clerk to interpret how the law will apply in a particular litigant's case, which would constitute legal advice. Clerks cannot provide legal advice.

4. I live in North Dakota and the defendant lives in ANOTHER STATE. Where do I file?

The answer to this question depends on the particular circumstances of the case. The clerk should advise the plaintiff to consult with legal counsel.

5. I live in this county and the person I want to sue lives in ANOTHER COUNTY in NORTH DAKOTA. Where do I file?

The answer to this question depends on the particular circumstances of the case. The person should consult the instructions that come with the forms.

6. Once I file my claim, how long before I go to court?

This is an administrative question, which may be answered by the clerk. Once a claim affidavit is filed, it must be served upon the opposing party who is then given 20 days from date of service to respond. If an answer is filed denying the claim and a hearing is requested, the case will be set for hearing not less than 10 days nor more than 30 days after the receipt of the request. Notice will be mailed to all parties.

7. My case was dismissed a year ago. Can I refile?

The answer depends upon how the case was dismissed and whether the statute of limitations has expired, which can be complicated issues. The party should seek advice from legal counsel.

B. ANSWERING A SMALL CLAIM

1. I received a small claim notice in the mail. What do I do now?

The defendant should follow the instructions on the notice and perhaps seek advice from an attorney. The clerk cannot tell the defendant whether to admit or deny the claim or how to respond to the notice; this would be legal advice, which clerks cannot provide.

2. How do I file a counterclaim?

Forms for a counterclaim are provided in the form sets available from the clerk or may be obtained from the Supreme Court's website. The clerk cannot suggest phraseology or whether a counterclaim should be filed.

C. BANKRUPTCY & ITS IMPACT

I filed a debt collection case against a person. After that, the person filed for bankruptcy. How will the bankruptcy case affect my case against that person?

The answer to this question can be complicated. It requires legal advice, which clerks cannot provide. From a procedural standpoint the clerk may advise that the filing of bankruptcy generally suspends ("stays") the state court proceedings. The party should seek advice from legal counsel as to how the bankruptcy might affect the plaintiff's claim.

D. COLLECTING ON A JUDGMENT

1. How long is my judgment good for?

The statute of limitations for judgments for execution purposes is ten years, and it can be extended for longer if requested, but the extension must be completed before the expiration.

2. Once a judgment is obtained, how long before I get my money?

This question requires *caution* by the clerk. A judgment gives the judgment creditor a lien against the defendant, but the judgment and lien do not guarantee voluntary payment. The judgment creditor may pursue collection through various legal forms of execution, but these can be complicated. The party should seek advice from an attorney.

3. How do I obtain garnishment?

The clerk should not give any advice as to how the garnishment should be pursued. The party should seek advice from an attorney.

4. How many garnishments can be on a person at one time?

The party should consult an attorney for options. Only so much can be garnished at any given time.

5. How do I find out where the defendant works?

This information could be obtained through discovery after a judgment has been obtained. The clerk should advise the judgment creditor to seek advice and assistance from legal counsel.

6. I tried an execution, but it didn't work. What do I do now?

The clerk cannot tell the person what he or she should do in this circumstance.

7. How do I stop a garnishment?

The clerk may provide the defendant with appropriate forms for requesting a hearing, if such forms are available. Otherwise, the clerk should advise the defendant that a motion to contest the garnishment needs to be filed with the clerk's office with notice to the garnishing party. A hearing will then be scheduled before a judge. They should be advised to seek the assistance of counsel.

8. Why can't the judge just put the defendant in jail?

The clerk may advise that jail is not a legal remedy available in civil proceedings. The plaintiff may wish to consult legal counsel to explore other available options.

9. Can the defendant make installment payments on the judgment?

The judgment entry may provide for installment payments. The judgment creditor may also accept partial payments even if they are not explicitly authorized in the judgment, but the defendant should seek advice from an attorney as to whether the judgment creditor who has accepted partial payments will be prevented from seeking accelerated collection of the judgment through other legal means.

10. The other party paid me just the judgment and not court costs. How do I collect the court costs?

If the judgment required the defendant to pay court costs, the judgment lien does not have to be released until those costs are paid. The plaintiff may pursue payment through execution, and the clerk should provide forms for doing so, if available.

E. SATISFYING & RELEASING THE JUDGMENT

1. I paid my judgment in full, and the plaintiff has not released it. How do I get the judgment released?

There is a procedure for this contingency in the North Dakota Rules, but the party

should seek advice from legal counsel on this issue.

2. I paid my judgment, so why don't you satisfy it?

There are procedures under Rule 7.1(d) of the North Dakota Rules of Court to address this situation. Refer the person to the rule's provisions.

F. TIME LIMIT FOR FILING A SMALL CLAIM.

What is the time limit to file a small claim? [Statute of limitations question.]

Many different code chapters could apply depending on the type of claim and the facts involved in the case. The party should consult with an attorney.

Helpful Phone Numbers And Websites
for People Who Need Legal Assistance or Information

Department of Transportation (North Dakota)

General Information: 701-328-2500
Drivers License & Traffic Safety: 701-328-2600
www.state.nd.us/dot

Lawyer Referral and Information Service

1-800-932-8880

Legal Services of North Dakota

1-800-634-5263
www.legalasst.org

Senior Legal Hotline (age 60+)

1-866-621-9886

North Dakota Council on Abused Women's Services

1-701-255-6240, 1-888-255-6240
418 East Rosser #320, Bismarck ND 58501
www.ndcaws@ndcaws.org

North Dakota State Bar Association

1-800-472-2685
www.sband.org

*** Attorney Referral Service*

1-800-472-2685

Woman's Law Initiative

www.womanslaw.org

North Dakota Century Code

www.state.nd.us/lr/information/statutes/cent-code.html

North Dakota Rules

www.ndcourts.com